



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,793	01/08/2002	Michael Marenick	P-0022US	9211

7590 06/30/2003
DAN M DE LA ROSA Esq
345 East 80th Street Suite 27H
New York, NY 10021

EXAMINER

BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/039,793

Applicant(s)

MARENICK ET AL.

Examiner

Mojdeh Bahar

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 (in part) and 7-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 (in part) is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Applicant's election of Group I, claims 1-6 (in part) in so far as they read on a hydrolyzed whole egg, an emollient and a humectant in Paper No. 6 is acknowledged.

Claims 1-6 (in part) in so far as they encompass ingredients other than a humectant, an emollient and a hydrolyzed whole egg, and claims 7-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Objections

Claim 3 is objected to because of the following informalities: The employment of parentheses, "(Sweet Almond)", "(Apricot)", "(Safflower)" and "(Sunflower)" in the claim is considered informal. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-6 (in part) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "hydrolyzed" in claim 1 is used by the claim to mean "water extracted from" the product", while the accepted meaning is "a product decomposed in the presence of water." Applicant's use of the term "hydrolyzed" is thus repugnant to the accepted meaning of the term in the art. Although the applicant can be his own lexicographer, he cannot use terms that are inconsistent with the acceptable meaning in the art.

Claim Rejections - 35 USC § 102

Art Unit: 1617

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6 (in part) are rejected under 35 U.S.C. 102(b) as being anticipated by Lavenir HealFast Cream.

Lavenir HealFast Cream teaches an all purpose cosmetic skin treatment composition comprising hydrolyzed whole egg, glycerin (humectant) and Sweet Almond Oil (emollient).


Note that the Trademark Electronic Search System records indicate that the composition has been used in commerce since 1995.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 on Monday, Tuesday, Thursday and Friday from 8:30 a.m. to 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar
Patent Examiner
June 25, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER
6/25/03